



ENERGYPLUS™ DISTRIBUTION LICENSE AGREEMENT

EnergyPlus™ Version: _____



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Company/Institution ("Licensee"): _____

Name of responsible Licensee employee: _____

Title or position: _____

Department (if applicable): _____

Address: _____

City / State / Postal Code / Country: _____

Tel: _____ Fax: _____

E-Mail: _____ Web: http://_____

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3.2 Termination by Licensee. Licensee may terminate this Agreement at any time upon written notice to Berkeley Lab.

3.3 Termination by Berkeley Lab. Berkeley Lab may terminate this Agreement upon written notice to Licensee if Licensee breaches the terms and conditions of this Agreement and fails to correct such breach within thirty (30) calendar days of receipt of written notice specifying such breach.

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5.2 Governing Law. This Agreement, and any disputes arising out of or in connection with this Agreement, shall be governed by and construed in accordance with the laws of the State of California, excluding its rules governing conflicts of laws.

5.3 Notices. All notices, reports, and other communications to either party pursuant to this Agreement will be made in writing (including any facsimile transmission or similar writing) and sent either by first-class mail, postage prepaid, or by courier, hand-delivery, or facsimile to the contact address for each party specified or to such other persons or addresses as the parties may designate by written notice from time to time. Each such notice, report, or other communication will be effective (i) if given by facsimile, upon receipt of transmission confirmation; (ii) if given by overnight courier, on the second day after delivery to such courier; (iii) if mailed by first-class mail, postage prepaid, on the fourth day after mailing; and (iv) if given by any other means, upon receipt at the specified address. Licensee's address for purposes of notice shall be the address specified in the preamble above. Berkeley Lab's address for purposes of notice shall be:

Lawrence Berkeley National Laboratory
Technology Transfer Department
One Cyclotron Road, MS 90-1070
Berkeley, CA 94720
Attention: Licensing Manager
Fax: 510/486-6457
Tel: 510/486-6467

5.4 Relationship of the Parties. The parties undertake their respective obligations under this Agreement as independent contractors. This Agreement will not create a(n) employee, agency, or partner relationship nor a partnership or joint venture between the parties for any purpose.

5.5 U.S. Export Controls. Licensee will observe all applicable United States and foreign laws and regulations (if any) with respect to the export, re-export, diversion or transfer of the Software, related technical data and direct products thereof, including, without limitation, the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations.

5.6 Approvals. Licensee will, at its own expense, make, obtain, and maintain in force at all times during the term of this

Agreement, all filings, registrations, reports, licenses, permits and authorizations (collectively “Approvals”) necessary or appropriate to perform its obligations under this Agreement. Should Licensee fail to maintain any such Approvals during the term of this Agreement, Berkeley Lab shall have the right to terminate this Agreement upon written notice to Licensee.

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5.8 Waiver. The failure of either party to assert any of its rights under this Agreement shall not be deemed to constitute a waiver of that party's right thereafter to enforce each and every provision of this Agreement in accordance with its terms.

5.9 Headings. The headings and subheadings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

5.10 Severability. The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision of this Agreement.

5.11 Assignment. This Agreement is binding upon and shall inure to the benefit of Berkeley Lab, its successors and assigns. Upon written notice to Berkeley Lab, Licensee may assign this Agreement to its wholly owned subsidiary. Any other attempt by Licensee to assign or otherwise transfer this Agreement is void unless Licensee obtains the prior written consent of Berkeley Lab, such consent not to be unreasonably withheld.

5.12 Entire Agreement. This Agreement, together with Exhibit A attached hereto, constitutes the full, complete, and entire agreement between the parties with respect to the subject matter hereof and supersedes all other prior agreements and understandings between the parties, whether written or oral, relating to the same subject matter. No modification or amendment of this Agreement shall be effective unless in writing and executed by a duly authorized representative of each party.

5.13 Counterparts. This Agreement may be executed in two counterparts, each of which will be deemed an original, but both of which together constitute one and the same instrument.

IN WITNESS WHEREOF the parties have caused their duly authorized representatives to execute this Agreement on the date written below, to be effective as of the date of the last party's signature below.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA,
THROUGH THE ERNEST ORLANDO LAWRENCE
BERKELEY NATIONAL LABORATORY

LICENSEE

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A REQUIRED TERMS FOR END USER LICENSE AGREEMENT

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